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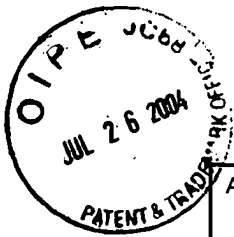
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Application No. (if known): 10/665943

Attorney Docket No.: 42133-00009USC1

## Certificate of Express Mailing Under 37 CFR 1.10

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on July 26, 2004  
Date

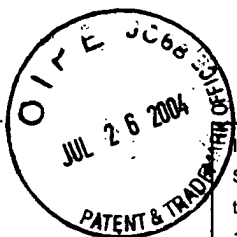
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Petition to Accord Filing Date Under 37CFR 1.182 (\_\_\_\_ pages)  
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Dated: July 26, 2004

Signature: 

(Jimmy D. Patterson)

Docket No.: 42133-00009USC1

(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Lin L. Healy et al.

Application No.: 10/665943

Art Unit: 1713

Filed: September 19, 2003

Examiner: P. Mulcahy

For: GEL COMPOSITIONS

**PETITION TO ACCORD FILING DATE UNDER 37 CFR 1.182**

Office of Petitions  
Deputy Director for Patent Examination Policy  
P.O. Box 1450  
Alexandria, VA 22313-1450

07/28/2004 SZENDIE1 00000010 10665943

01 FC:1460

130.00 OP

**REMARKS**

Applicants respectfully petition the United States Patent and Trademark Office to accord the filing date of September 19, 2003 to the above-identified application because all requirements for receiving a filing date were met when the application was filed. Specifically, the Applicants will show that the drawings (attached herewith as Exhibit A) are not necessary under 35 U.S.C. §113 and 37 CFR 1.81(a).

The above-identified application was originally filed on September 19, 2003. Applicants filed the application as a continuation of U.S. Ser. App. No. 09/419,571, filed October 18, 1999, which claims benefit of U.S. Provisional Patent Application No. 60/106,094, filed October 29, 1998. On May 26, 2004, Applicants received a Notice of Incomplete Nonprovisional Application indicating that the filing date had not been granted because drawings were not submitted.

**Requirements for According a Filing Date**

To accord a filing date, the application must include a specification contain:

HOUSTON 314443v1 42133-00009USC1

- 1) a specification satisfying 35 U.S.C., first paragraph and 37 CFR 1.71; and
- 2) a drawing where necessary under U.S.C. §113 and 37 CFR 1.81(a).

There is no question that the specification does not satisfy 35 U.S.C. §112, first paragraph and 37 CFR 1.71. Thus, the only issues are:

- 1) whether the drawings were necessary under 35 U.S.C. §113 and 37 CFR 1.81(a) to receive a filing date; and
- 2) if the drawings necessary, whether a filing date as of the date of deposit can be according by this petition since the drawings were incorporated the parent by reference.

**ISSUE 1: WERE THE DRAWINGS NECESSARY UNDER 35 U.S.C. §113 AND 37 CFR 1.81(A) TO RECEIVE A FILING DATE?**

THE DRAWINGS ARE NOT NECESSARY FOR UNDERSTANDING THE SUBJECT MATTER SOUGHT TO BE PATENTED. CONSEQUENTLY, THE REQUIREMENTS FOR RECEIVING A FILING DATE WERE SATISFIED UPON FILING OF THE PRESENT APPLICATION.

Rule 1.81(a) states that an applicant is required to furnish a drawing of his or her invention “where necessary for the understanding of the subject matter sought to be patented.” See 37 CFR 1.81(a) (emphasis added). Drawings are necessary when they provide description and details required to enable any person skilled in the art or science to which the invention pertains to make and use the invention as of its filing date. *In re Glass*, 492 F.2d 1228, 181 USPQ 31 (CCPA 1974). When the drawings are not necessary for the understanding of an invention, their inclusion is optional. See 37 CFR 1.81(c). Thus if a drawing is not necessary, a specification that is otherwise sufficient according to 35 U.S.C. §112, first paragraph must be accorded a filing date as of the date of deposit despite the omission of a drawing.

The Applicants submit that the drawings are not necessary under 35 U.S.C. 113 and 37 CFR 1.81(a). As mentioned above, the receipt of a filing date is dependent on the inclusion of drawings only when the drawings are necessary to understand the subject matter sought to be patented. In the present case, the drawings are not required because the specification enables any skilled person in the art to make and use the invention as of its filing date. The drawings in question are very schematic representations of generic types of polymers. See *Exhibit A*. Specifically, Figures 1-5B illustrate the schematically structures of a diblock copolymer, triblock copolymers, a radial copolymer, a star copolymer, and multiblock copolymers,

respectively. But these generic structure types have been well-known in the art for at least twenty years. In fact, a search of the U.S. patent database shows 931 patents reciting a diblock copolymer since 1976, one of which is U.S. Pat. No. 4,716,203 entitled "Diblock and Triblock Copolymers" issued on December 29, 1987. Radial copolymers are described in U.S. Pat. No. 3,950,291 to Jurrens issued on April 13, 1976. Star polymers are described in U.S. Pat. No. 3,985,830 entitled "Star Polymers and Process for the Preparation Thereof" issued on October 12, 1976. Multiblock copolymers are described in U.S. Pat. No. 3,937,760 entitled "Process for Producing Multiblock Copolymer and Products Produced Thereby" which issued February 10, 1976. A copy of each of these patents is provided herewith as Exhibit B. Consequently, any person skilled in the art could easily ascertain the information contained in Figures 1-5b.

Moreover the specification of the present application as filed contains descriptions of the polymers that is sufficient to enable one skilled in the art to make and use the invention. For example, pages 8-11 provide almost 4 pages of description of various polymer types that can be used. Thus, the drawings themselves are not necessary to understand the invention.

Finally, it is the practice of the patent office that drawing are not necessary for applications having at least one claim to a composition of matter. For instance, MPEP §608.02 "Handling of Drawing Requirements Under the First Sentence of U.S.C. 113," third paragraph states:

"A drawing is not required for a filing date under U.S.C. 111 and 113 if the application contains: ....

(B) at least one composition claim including the term 'composition,' 'compound,' 'mixture,' or 'pharmaceutical' in its introductory phrase...."

Claim 1 of the present application is directed to "[a] gel composition." Thus, under the Office of Initial Patent Examining procedures, the present application should be deemed not to require a drawing to be accorded a filing date.

For each of these reasons the Applicants submit that the drawings are not necessary under 35 U.S.C. 113 or 37 CFR 1.81(a). Thus, the present application is entitled to a filing date of September 19, 2003 even though the drawings were inadvertently omitted.

**ISSUE 2: IF THE DRAWINGS NECESSARY, CAN A FILING DATE AS OF THE DATE OF DEPOSIT BE ACCORDED BY THIS PETITION SINCE THE DRAWINGS WERE INCORPORATED THE PARENT BY REFERENCE?**

THE FILING DATE AS OF THE DATE OF DEPOSIT MUST BE ACCORDED BECAUSE THE DRAWINGS WERE INCORPORATED BY REFERENCE TO THE PARENT APPLICATION AND THE REMAINING REQUIREMENTS FOR ACCORDING SUCH A DATE ARE SATISFIED BY THIS PETITION.

Even where an omitted drawing is required under U.S.C. 113 and Rule 1.81(a), a filing date as of the date of deposit of an application may be granted when the under the following circumstances. First, in a continuation application the Applicants incorporate by reference the prior application by including in the continuation application-as-filed a statement that the enumerated parent application is “incorporated by herein by reference.” MPEP 201.06(c). The statement may appear in the specification or the application transmittal letter. *Id.* Second, the incorporation by reference statement can only be relied on when the portion of the prior application was inadvertently omitted from the application papers. *Id.* A grantable petition also requires an amendment submitting the necessary material and requesting that the omitted material be included in the continuation application. *Id.*

The Applicants submit that the parent application was incorporated by reference in the present application as filed. First, the transmittal letter was supplied using the PTO/SB/05 form and Applicants expressly indicated that the present application is a continuation of the parent application 09/419,571. The form indicates that for continuation applications the entire disclosure of the prior application is incorporated by reference. *See Exhibit C.* Contemporaneously with the application, the Applicants also filed a preliminary amendment amending the specification of the application to include a cross reference to the parent application and the provisional application. *See Exhibit D.* The cross-reference reads:

“--PRIOR RELATED APPLICATIONS

This is a continuation application of U.S. Patent Application Serial No. 09/419,571, filed October 18, 1999, which claims benefit of U.S. Provisional Patent Application No. 60/106,094, filed October 29, 1998, both of which are incorporated by reference herein in their entirety.—“

*Exhibit D, Preliminary Amendment of September 19, 2003.*

In addition, the Applicants provided a copy of the specification that included this statement. A copy of this page of the as-filed application is provided as Exhibit E. And as evidenced by the stamped postcard, the drawings were filed with the parent application. *See Exhibit F.* Because the present application incorporates the contents of the parent application, including the drawings, in its entirety, the drawings from the parent application were incorporated into the as-filed application by reference to the parent application. Thus, the first requirement for granting a filing date is met.

Second, the undersigned submitted the as-filed application and hereby asserts that the omission of the drawings from the as-filed application was inadvertent.

Third, Applicants submit herewith as Exhibit G an amendment containing the inadvertently omitted drawings and request that the drawings be entered in the application. The Applicants submit that no new oath is needed since these drawings are identical to those of the parent application and a copy of the original oath has previously been supplied. A copy of the original oath is attached as Exhibit H

**CONCLUSION**

For the reasons given above, the Applicants respectfully submit that the requirements for a grantable petition to accord a filing date are met and respectfully request that the present petition be granted and a filing date as of the date of mailing be accorded to the present application.

The Commissioner is hereby authorized to charge any additional required fees, or credit any overpayments, to Deposit Account No. 10-0447, Reference No. 42133-00009USC1/(ABDON).

Dated: July 26, 2004

Respectfully submitted,

By 

Robert L. Abdon, Ph.D.

Registration No.: 50,996

JENKENS & GILCHRIST, A PROFESSIONAL  
CORPORATION

5 Houston Center

1401 McKinney, Suite 2600

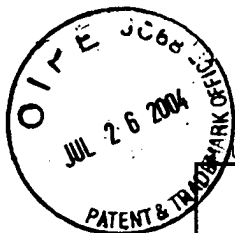
Houston, Texas 77010

(713) 951-3338

(713) 951-3314 Facsimile

Attorneys For Applicants





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# FEE TRANSMITTAL for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$)  
130.00

## Complete if Known

Application Number	10/665943
Filing Date	September 19, 2003
First Named Inventor	Lin L. Healy
Examiner Name	P. Mulcahy
Art Unit	1713
Attorney Docket No.	42133-00009USC1

## METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit Card ☐ Money Order ☐ Other ☐ None

☐ Deposit Account:

Deposit Account Number  
10-0447

Deposit Account Name  
Jenkins & Gilchrist, a Professional Corporation

The Director is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☒ Credit any overpayments

☒ Charge any additional fee(s) or any underpayment of fee(s)

☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

## FEE CALCULATION

### 1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	

SUBTOTAL (1) (\$)  
0.00

### 2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

		Extra Claims	Fee from below	Fee Paid
Total Claims	-20** =		x	
Independent Claims	-3** =		x	
Multiple Dependent				

Large Entity		Small Entity		Fee Description
Fee Code	Fee (\$)	Fee Code	Fee (\$)	
1202	18	2202	9	Claims in excess of 20
1201	86	2201	43	Independent claims in excess of 3
1203	290	2203	145	Multiple dependent claim, if not paid
1204	86	2204	43	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$)  
0.00

\*\*or number previously paid, if greater; For Reissues, see above

## FEE CALCULATION (continued)

### 3. ADDITIONAL FEES

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet.	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for ex parte reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	130.00
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37CFR 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify)

\*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$)  
130.00

## SUBMITTED BY

Name (Print/Type) Robert L. Abdon, Ph.D.

Registration No. (Attorney/Agent)

50,996

## (Complete if applicable)

Telephone (713) 951-3338

Signature

Date

July 26, 2004



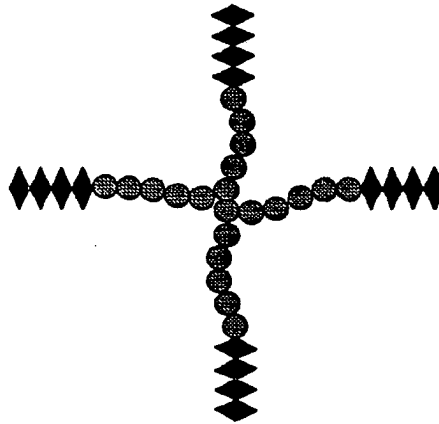
Diblock Copolymer

FIG. 1



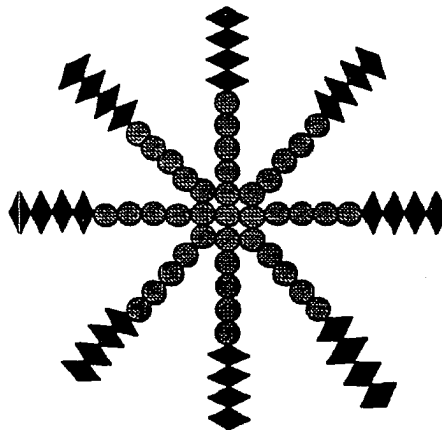
Triblock Copolymer

FIG. 2



Radial Copolymer

FIG. 3



Star Copolymer

FIG. 4



FIG 5A



FIG. 5B

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

# UTILITY PATENT APPLICATION TRANSMITTAL

(Only for new nonprovisional applications under 37 CFR 1.53(b))

Attorney Docket No. 42133-00009USPT  
First Inventor Lin Lu Healy  
Title Gel Compositions  
Express Mail Label No. EK287.111759US

## APPLICATION ELEMENTS

See MPEP chapter 600 concerning utility patent application contents.

## ADDRESS TO:

Mail Stop Patent Application  
Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

1. ☒ Fee Transmittal Form (e.g., PTO/SB/17)  
(Submit an original and a duplicate for fee processing)
2. ☐ Applicant claims small entity status.  
See 37 CFR 1.27.
3. ☒ Specification [Total Pages \_\_\_\_\_]  
(preferred arrangement set forth below)
  - Descriptive title of the invention
  - Cross Reference to Related Applications
  - Statement Regarding Fed sponsored R & D
  - Reference to sequence listing, a table, or a computer program listing appendix
  - Background of the Invention
  - Brief Summary of the Invention
  - Brief Description of the Drawings (if filed)
  - Detailed Description
  - Claim(s)
  - Abstract of the Disclosure
4. ☐ Drawing(s) (35 U.S.C. 113) [Total Sheets \_\_\_\_\_]
5. Oath or Declaration [Total Sheets \_\_\_\_\_]
  - a. ☐ Newly executed (original or copy)
  - b. ☒ Copy from a prior application (37 CFR 1.63(d))  
(for continuation/divisional with Box 18 completed)
    - i. ☐ **DELETION OF INVENTOR(S)**  
Signed statement attached deleting inventor(s) name in the prior application, see 37 CFR 1.63(d)(2) and 1.33(b).
6. ☐ Application Data Sheet. See 37 CFR 1.76

7. ☐ CD-ROM or CD-R in duplicate, large table or Computer Program (Appendix)
8. Nucleotide and/or Amino Acid Sequence Submission (if applicable, all necessary)
  - a. ☐ Computer Readable Form (CRF)
  - b. Specification Sequence Listing on:
    - i. ☐ CD-ROM or CD-R (2 copies); or
    - ii. ☐ Paper
  - c. ☐ Statements verifying identity of above copies

## ACCOMPANYING APPLICATION PARTS

9. ☐ Assignment Papers (cover sheet & document(s))
10. ☐ 37 CFR 3.73(b) Statement- ☐ Power of Attorney  
(when there is an assignee)
11. ☐ English Translation Document (if applicable)
12. ☐ Information Disclosure Statement (IDS)/PTO-1449 ☐ Copies of IDS Citations
13. ☒ Preliminary Amendment
14. ☒ Return Receipt Postcard (MPEP 503)  
(Should be specifically itemized)
15. ☐ Certified Copy of Priority Document(s)  
(if foreign priority is claimed)
16. ☐ Nonpublication Request under 35 U.S.C. 122 (b)(2)(B)(i). Applicant must attach form PTO/SB/35 or its equivalent.
17. ☒ Other: Request for Two-Month Extension.....

18. If a CONTINUING APPLICATION, check appropriate box, and supply the requisite information below and in the first sentence of the specification following the title, or in an Application Data Sheet under 37 CFR 1.76:

☒ Continuation ☐ Divisional ☐ Continuation-in-part (CIP) of prior application No.: 09/419,571.....

Prior application information:

Examiner Peter D. Mulchay

Art Unit: 1447

For CONTINUATION OF DIVISIONAL APPS only; The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

## 19. CORRESPONDENCE ADDRESS

☐ Customer Number: 24238 OR ☐ Correspondence address below

Name	Jenkins & Gilchrist				
Address	1401 McKinney, Suite 2700				
City	Houston	State	Texas	Zip Code	77010
Country	USA	Telephone	713-951-3300	Fax	713-951-3314

Name (Print/Type) Robert L. Abdon Registration No. (Attorney/Agent) 50,996

Signature *Robert L. Abdon* Date 09/18/2003

This collection of information is required by 37 CFR 1.53(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Patent Application, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Healy, et. al.

Serial No.:

Filed:

For: GEL COMPOSITIONS

§  
§ Group No.:  
§  
§  
§  
§ Examiner:  
§

MS Patent Application  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

"EXPRESS MAIL" CERTIFICATE UNDER 37 C.F.R. §1.10	
"EXPRESS MAIL" Mailing Label No.	<i>EK287111759US</i>
Date of Deposit:	<i>September 19, 2003</i>
I hereby certify that this paper, including the documents referred to therein, or fee, is being deposited with the U.S. Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to: MS Patent Application, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450	
Type or Print Name:	<i>Daniel G. Nguyen</i>
Signature:	<i>Daniel Nguyen</i>

PRELIMINARY AMENDMENT

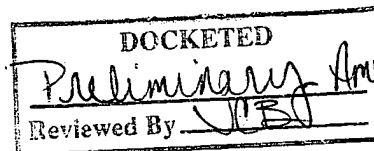
This preliminary amendment is being filed contemporaneously with an application that is a continuation of U.S. Ser. App. No. 09/419,571, filed October 18, 1999, which claims benefit of U.S. Provisional Patent Application No. 60/106,094, filed October 29, 1998.

Amendments to the Specification begin on page 2.

Amendments to the Claims begin on page 3.

Remarks begin on page 10.

An Appendix including a Declaration by Lin Lu Healy is attached following page 10 of this paper.



Amendments to the Specification

On page one, please delete the section titled Cross-Reference to Related Applications and insert therefore the following paragraph:

--PRIOR RELATED APPLICATIONS

This is a continuation application of U.S. Patent Application Serial No. 09/419,571, filed October 18, 1999, which claims benefit of U.S. Provisional Patent Application No. 60/106,094, filed October 29, 1998, both of which are incorporated by reference herein in their entirety.--

### Amendments to the Claims

The following listing of claims will replace all prior versions, and listings, of claims in the application:

#### Listing of Claims:

Please cancel claims 1-27.

Please add the following new claims

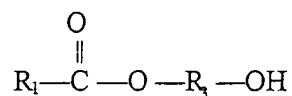
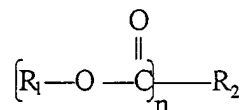
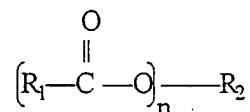
28. (New) A gel composition, comprising:

an ester compound; and

a polymer compound having at least one rigid block selected from the group consisting of polystyrene, polyethylene, polyvinylchloride, and phenolics and one elastic block selected from the group consisting of ethylene/butadiene copolymers, polyisoprene, polybutadiene, ethylene/propylene copolymers, ethylene-propylene/diene copolymers, wherein the polymer is selected from the group consisting of triblock copolymers, star polymers, radial polymers, multi-block copolymers, and combinations thereof,

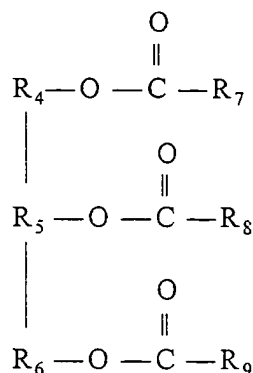
wherein the gel composition is substantially free of mineral oils;

wherein the ester is represented by one of the following formulas:



or





wherein n=1, 2, 3, and 4, and

R<sub>1</sub> includes hydrogen, hydrocarbyl, phenyl, methoxyphenyl, alkylphenyl, substituted alkyl, and substituted phenyl; R<sub>2</sub> includes hydrogen, hydrocarbyl, phenyl, methoxyphenyl, alkylphenyl, substituted alkyl, substituted phenyl, alkylene, phenylene, substituted alkylene, and substituted phenylene, and R<sub>3</sub> includes alkylene, phenylene, substituted alkylene, or substituted phenylene, and

wherein R<sub>4</sub>, R<sub>5</sub>, and R<sub>6</sub> individually include alkylene, phenylene, substituted alkylene, or substituted phenylene, and R<sub>7</sub>, R<sub>8</sub> and R<sub>9</sub> individually include hydrogen, hydrocarbyl, phenyl, methoxyphenyl, alkylphenyl, substituted alkyl, and substituted phenyl.

29. (New) The gel composition of claim 28, further comprising a diblock copolymer,

wherein the gel composition is substantially free of mineral oils.

30. (New) The gel composition of claim 28, wherein the ester is selected from the group consisting of isopropyl myristate, isopropyl palmitate, C<sub>12</sub>-C<sub>15</sub> alkyl benzoate, octyl methoxycinnamate, octyl dodecyl neopentanoate, propylene glycol dicaprylate/caprate, jojoba oil, and isostearyl neopentanoate.

31. (New) The gel composition of claim 28, wherein the polymer compound is present in the amount of about 1% to about 40 % by weight.

32. (New) The gel composition of claim 29, wherein the diblock copolymer is selected from the group consisting of styrene-ethylene/propylene copolymers, styrene-ethylene/butadiene copolymers, styrene-isoprene copolymers, and styrene-butadiene copolymers.

33. (New) The gel composition of claim 28, wherein the triblock copolymer is selected from the group consisting of styrene-ethylene/propylene-styrene copolymers, styrene-ethylene/butadiene-styrene copolymers, styrene-isoprene-styrene copolymers, and styrene-butadiene-styrene copolymers.

34. (New) The gel composition of claim 29, wherein the diblock copolymer is hydrogenated.

35. (New) The gel composition of claim 28, wherein the triblock copolymer is hydrogenated.

36. (New) The gel composition of claim 28, wherein the triblock copolymer includes a grafted functional group.

37. (New) The gel composition of claim 28, further comprising a suspended component.

38. (New) The gel composition of claim 37, further comprising a diblock copolymer.

39. (New) The gel composition of claim 37, wherein the suspended component is a solid selected from the group consisting of organic materials, inorganic materials, organometallic materials, phosphorescent materials, and fluorescent materials.

40. (New) The gel composition of claim 37, wherein the suspended component is a solid selected from the group consisting of zinc oxide, coated zinc oxide, surface-treated zinc oxide, titanium dioxide, surface-treated titanium dioxide, graphite, explosives, air-sensitive chemicals, moisture-sensitive chemicals, boron nitride, iron oxides, talc, mica, plastics, polymers, silica, silicon dioxide, aluminum oxide, metal particles, antibacterials, antibiotics, anesthetics, glass, clays, gums, capsules containing an active ingredient, starch, modified starch, other encapsulated materials, and combinations thereof.

41. (New) The gel composition of claim 37, wherein the suspended component is a liquid selected from the group consisting of water, water containing a water-soluble material, glycerin, propylene glycol, butylene glycol, alcohols, acids, surfactants, emulsifiers, polyglycerols, ethers, polar esters, fluorinated compounds, perfluoropolyethers, silicones, silicon-containing compounds, and combinations thereof.

42. (New) The gel composition of claim 28, further comprising an active ingredient.

43. (New) The gel composition of claim 42, wherein the active ingredient is selected from the group consisting of sunscreens, antiperspirants, deodorants, perfumes, cosmetics, emollients, insect repellants, pesticides, herbicides, fungicides, plasticizers, insecticides, and medicaments.

44. (New) A gel composition, comprising:

- a compound selected from the group consisting of alcohols, ethers, naturally occurring fats and oils, and combinations thereof; and

- a polymer compound selected from the group consisting of diblock copolymers, triblock copolymers, star polymers, radial polymers, multi-block copolymers, and combinations thereof,

wherein the polymer compound has at least one rigid block selected from the group consisting of polystyrene, polyethylene, polyvinylchloride, and phenolics and one elastic block selected from the group consisting of ethylene/butadiene copolymers, polyisoprene, polybutadiene, ethylene/propylene copolymers, ethylene-propylene/diene copolymers.

45. (New) The gel composition of claim 44, wherein the alcohols include octyl dodecanol or isostearyl alcohol.

46. (New) The gel composition of claim 44, wherein the ethers include dicarylyl ether.

47. (New) A gel composition, comprising:

a compound selected from the group consisting of esters, alcohols, ethers, naturally occurring fats and oils, and combinations thereof; and

a polymer compound selected from the group consisting of alkyl galactomannan, polybutadiene, and combinations thereof.

48. (New) A method of making a gel composition, comprising:

mixing an ester compound with a polymer compound having at least one rigid block selected from the group consisting of polystyrene, polyethylene, polyvinylchloride, and phenolics and one elastic block selected from the group consisting of ethylene/butadiene copolymers, polyisoprene, polybutadiene, ethylene/propylene copolymers, ethylene-propylene/diene copolymers, wherein the polymer is selected from the group consisting of triblock copolymers, star polymers, radial polymers, multi-block copolymers, and combinations thereof,

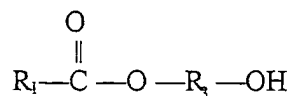
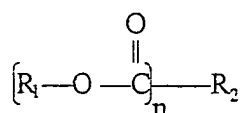
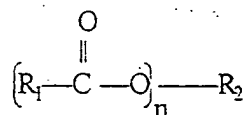
heating the mixture;

agitating the mixture until the mixture becomes homogeneous; and

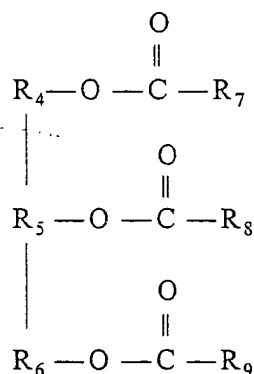
cooling the mixture;

wherein the gel composition is substantially free of mineral oils;

wherein the ester is represented by one of the following formulas:



or



wherein n=1, 2, 3, and 4, and

R<sub>1</sub> includes hydrogen, hydrocarbyl, phenyl, methoxyphenyl, alkylphenyl, substituted alkyl, and substituted phenyl; R<sub>2</sub> includes hydrogen, hydrocarbyl, phenyl, methoxyphenyl, alkylphenyl, substituted alkyl, substituted phenyl, alkylene, phenylene, substituted alkylene, and substituted phenylene, and R<sub>3</sub> includes alkylene, phenylene, substituted alkylene, or substituted phenylene, and

wherein R<sub>4</sub>, R<sub>5</sub>, and R<sub>6</sub> individually include alkylene, phenylene, substituted alkylene, or substituted phenylene, and R<sub>7</sub>, R<sub>8</sub> and R<sub>9</sub> individually include hydrogen, hydrocarbyl, phenyl, methoxyphenyl, alkylphenyl, substituted alkyl, and substituted phenyl.

49. (New) A method of making a gel composition, comprising:

mixing an alcohol, an ether or a naturally occurring fat or oil or combinations thereof with a polymer compound selected from the group consisting of diblock copolymers, triblock copolymers, star polymers, radial polymers, multi-block copolymers, and combinations thereof, wherein the polymer compound has at least one rigid block selected from the group consisting of polystyrene, polyethylene, polyvinylchloride, and phenolics and one elastic block selected from the group consisting of ethylene/butadiene copolymers, polyisoprene, polybutadiene, ethylene/propylene copolymers, ethylene-propylene/diene copolymers

heating the mixture;

agitating the mixture until the mixture becomes homogeneous; and

cooling the mixture.

50. (New) A method of making a gel composition, comprising:

mixing an ester, an alcohol, an ether or a naturally occurring fat or oil with alkyl galactomannan or polybutadiene,

heating the mixture;

agitating the mixture until the mixture becomes homogeneous; and

cooling the mixture.

REMARKS

The Specification has been amended to insert the section entitled "Prior Related Applications" after the title.

Original claims 1-27 are canceled. New claims 28-50 have been added. Thus, upon entry of this amendment claims 28-50 are pending. No new matter has been submitted.

No fees are believed due; however, the Commissioner is hereby authorized to charge any fees that may be due, or credit any overpayment to Deposit Account 10-0447, reference 42133-00009USPT (BAI)

Respectfully submitted,  
JENKENS & GILCHRIST  
A Professional Corporation



---

Robert L. Abdon  
Reg. No. 50,996

Date: 09/18/2003  
Jenkins & Gilchrist, P.C.  
1401 McKinney, Suite 2700  
Houston, Texas 77010-4034  
(713) 951-3338  
(713) 951-3314 (fax)

APPENDIX A: DECLARATION OF LIN LU HEALY



SEP-18-2003 10:45 FROM:JENKENS &amp; CHRIST

(139513346

10:25 --23168

P.2/3

Atty Docket: 42133.00009USPT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Healy, et. al.

Serial No.: 09/419,571

Filed: October 18, 1999

For: GEL COMPOSITIONS

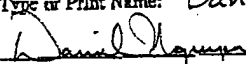
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Group No.: 1713

Examiner: Peter D. Mulcahy

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

"EXPRESS MAIL" CERTIFICATE UNDER 37 C.F.R. §1.10	
"EXPRESS MAIL" Mailing Label No.	EK 28711759US
Date of Deposit:	September 13, 2003
I hereby certify that this paper, including the documents referred to therein, or fee, is being deposited with the U.S. Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450	
Type or Print Name:	Daniel G. Nguyen
	
Signature:	

DECLARATION UNDER 37 C.F.R. § 1.132

I, Lin Lu Healy, hereby declare:

1. I am at least 18 years of age and am competent in all respects to make the following statements.
2. I live at 10942 Saint Mary's, Houston, Texas 77079.
3. At the time of the application that matured into U.S. Patent 6,433,068 was filed, I was known as Lin Lu and resided at 2100 Tannehill, Apt. 2009, Houston, TX 77008
4. I am the Lin Lu identified as an inventor on U.S. Patent 6,433,068.
5. By the time the present application, U.S. Patent Application Serial No. 09/419,571, was filed, my name had changed to Lin Lu Healy.

1

HOUSTON 283729v1 42133-000091USPT

SEP-18-2003 10:45 FROM:JENKENS GILCHRIST 7139513346

TO:281 352 3199

P.3/3

Atty Docket: 42133.00009USPT

6. I have reviewed U.S. Patent No. 6,433,068 entitled "Hydrocarbon Gels as Suspending and Dispersing Agents and Products," of which I and David S. Morrison are also inventors.

7. I declare that I and David S. Morrison contributed the subject matter related to hydrocarbon ester gels disclosed in U.S. Patent No. 6,433,068.

8. I declare further that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such false statements may jeopardize the validity of the application or any patent issuing thereon. Executed on Sept 18, 2003.

  
Lin Lu Healy (a/k/a Lin Lu)

Amendments to the Specification

On page one, please delete the section titled Cross-Reference to Related Applications and insert therefore the following paragraph:

--PRIOR RELATED APPLICATIONS

This is a continuation application of U.S. Patent Application Serial No. 09/419,571, filed October 18, 1999, which claims benefit of U.S. Provisional Patent Application No. 60/106,094, filed October 29, 1998, both of which are incorporated by reference herein in their entirety.--

PATENT

ATTORNEY DOCKET NO.: 42133.9USPT

The Patent and Trademark Office date stamp sets forth the receipt date (or both the receipt date and the Serial Number) of a patent application identified as follows:

Applicant: HELLY ET AL.

Title: GEL COMPOSITION

jc584 U.S. PTO

09/419571



10/18/99

- |   |  |
|---|--|
| <input type="checkbox"/> CPA Transmittal                                    | <input type="checkbox"/> Combined Declaration and Power of Attorney                    |
| <input type="checkbox"/> Provisional Transmittal                            | executed      unexecuted   |
| <input checked="" type="checkbox"/> Patent Application Transmittal          | <input checked="" type="checkbox"/> Drawings    sheets formal <u>3</u> sheets informal |
| <input checked="" type="checkbox"/> Certificate of Express Mail 37 CFR 1.10 | <input checked="" type="checkbox"/> Information Disclosure Statement                   |
| Express Mail No. <u>EE 371001406US</u>                                      | <input checked="" type="checkbox"/> PTO form 1449, <u>16</u> references                |
| <input checked="" type="checkbox"/> Application for patent including        | <input type="checkbox"/> Petition for Extension of Time ( ) months                     |
| <u>52</u> pgs spec., <u>6</u> pgs. claims                                   | <input checked="" type="checkbox"/> Check \$ <u>1120.00</u> CK # <u>135217</u>         |
| <u>27</u> total claims, <u>1</u> pgs. abstract                              | <input type="checkbox"/> Preliminary Amendment,    pgs                                 |
| <input type="checkbox"/> Assignment & check \$                              | <input type="checkbox"/> Priority Document,    pgs                                     |
| <input type="checkbox"/> Small Entity Statement                             | <input checked="" type="checkbox"/> Other <u>POSTCARD</u>                              |

Atty/Sec Initials BA/PA Client/

Matter Name

Renewal/Gel Composition

Date 10/18/99

STATUS CHECK - Filing receipt  
Due April 18, 2000  
By any On 10/27/99



Docket No.: 42133-00009USC1  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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In re Patent Application of:  
Lin L. Healy et al.

Application No.: 10/665943

Art Unit: N/A

Filed: September 19, 2003

Examiner: Not Yet Assigned

For: GEL COMPOSITIONS

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**SECOND PRELIMINARY AMENDMENT**

Office of Petitions  
Deputy Director of Patent Examination Policy  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**INTRODUCTORY COMMENTS**

Prior to examination on the merits, please amend the above-identified U.S. patent application as follows:

**Amendments to the Drawings** begin on page 2 of this paper and include both an attached replacement sheet.

**Remarks/Arguments** begin on page 3 of this paper.

An **Appendix** including drawing figures is attached following page 3 of this paper.

**AMENDMENTS TO THE DRAWINGS**

The attached sheet(s) of drawings includes Figures 1-5B which were inadvertently omitted from the application as filed. While an amendment including changes to the drawings generally includes Replacement sheets for each amended drawing as well as Annotated sheets showing changes, Applicants respectfully assert that only the attached sheets are necessary to submit the drawings for entry in the case.

Attachment:      Original drawings (4 sheets)


**REMARKS**

The present application was filed as a continuation of U.S. Ser. App. No. 09/419,571, filed October 18, 1999, which claims benefit of U.S. Provisional Patent Application No. 60/106,094, filed October 29, 1998. On May 26, 2004, Applicants received a Notice of Incomplete Nonprovisional Application indicating that the filing date had not been granted because drawings were not submitted. As Applicants discuss in the Petition to Accord a Filing Date submitted herewith (hereafter "the Petition"), the present application as-filed incorporated the drawings by reference to the parent application and the provisional application via statements in the transmittal letter and the specification. As part of the Petition to Accord a Filing Date, Applicants, via this amendment, submit the inadvertently omitted drawing and request that they be included in the present application.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Dated: July 26, 2004

Respectfully submitted,

By 

Robert L. Abdon, Ph.D.

Registration No.: 50,996

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CORPORATION

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(713) 951-3314 Facsimile

Attorneys For Applicant

Attachments

**ORIGINAL DRAWING SHEETS**





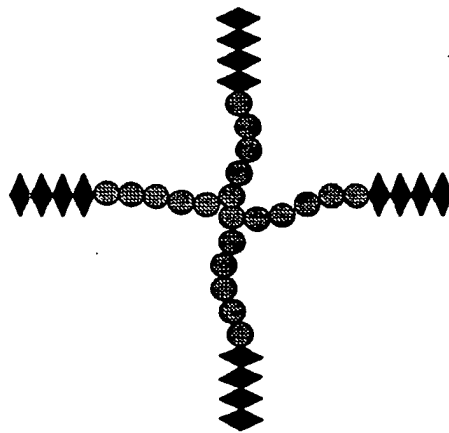
Diblock Copolymer

FIG. 1



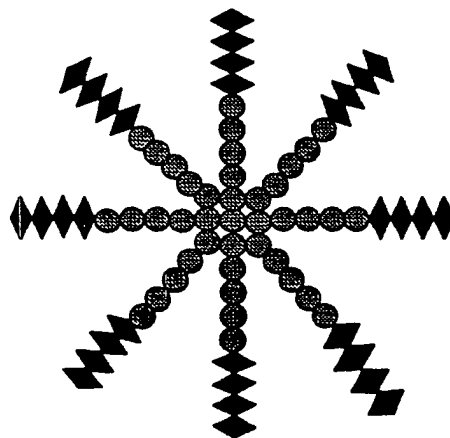
Triblock Copolymer

FIG. 2



Radial Copolymer

FIG. 3



Star Copolymer

FIG. 4



## Multi-block Copolymer

FIG 5A



## Multi-block Copolymer

FIG. 5B

## D E C L A R A T I O N

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name; and

We verily believe we are the original, first, and joint inventors or discoverers of the subject matter entitled GEL COMPOSITION described and claimed in the specification of U.S. patent application Serial No. 09/419,571, filed October 18, 1999.

We have reviewed and understand the contents of the above-identified specification, including the claims.

We do not know and do not believe that such subject matter was ever known or used in the United States before our invention or discovery thereof, or patented or described in any printed publication in any country before our invention or discovery thereof, or more than one year prior to this application, or in public use or on sale in the United States more than one year prior to this application, or patented or made the subject of an inventor's certificate in any country foreign to the United States on an application filed by us or our legal representatives or assigns more than twelve months prior to this application;

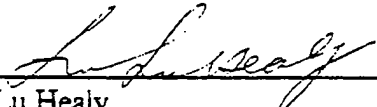
No application for patent or inventor's certificate on such subject matter has been filed by us or our legal representatives or assigns in any country foreign to the United States, unless one is indicated below: None.

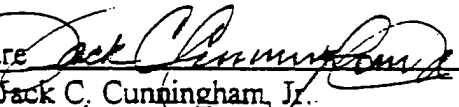
We hereby claim the benefit under 35 U.S.C. 119(e) of any United States provisional application(s) listed below:

U.S. Provisional Patent Application Serial No. 60/106,094, filed October 29, 1998.

All statements made herein of our own knowledge are true and all statements made on information and belief are believed to be true; and further these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

WE ACKNOWLEDGE OUR DUTY TO DISCLOSE TO THE U.S. PATENT AND TRADEMARK OFFICE ALL INFORMATION KNOWN TO US TO BE MATERIAL TO PATENTABILITY AS DEFINED IN 37 C.F.R. §1.56.

Signature   
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Houston, TX 77057

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Date: 12/6/99  
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Houston, TX 77092

Signature David S. Morrison  
Name: David S. Morrison  
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Signature Wei Song 12/2/99  
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Date: Dec 1st, 99  
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